



February 19, 1999

SENATE BILL No. 11

DIGEST OF SB0011 (Updated February 17, 1999 12:40 pm - DI 51)

Citations Affected: IC 30-4.

Synopsis: Charitable trusts. Provides that the trust code applies to charitable trusts. Defines "charitable trust". Defines "trust for a benevolent public purpose". Requires the trustee of a trust for a benevolent public purpose to certify to the attorney general that a written statement of accounts has been prepared and is available to the attorney general and the general public upon request.

Effective: July 1, 1999.

Zakas, Antich

January 6, 1999, read first time and referred to Committee on Judiciary.
February 18, 1999, reported favorably — Do Pass.

SB 11—LS 6167/DI 92+



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February 19, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 11

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 30-4-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A trust is a fiduciary
3 relationship between a person who, as trustee, holds title to property
4 and another person for whom, as beneficiary, the title is held.
5 (b) Subject to IC 30-4-2-8, the same person may be both the trustee
6 and a beneficiary.
7 (c) The rules of law contained in this article do not apply to:
8 (1) trusts created by operation of law;
9 (2) business trusts (as defined in IC 23-5-1);
10 (3) security instruments and creditor arrangements;
11 (4) voting trusts;
12 (5) religious, educational, and cultural institutions, **created in**
13 **other than trust form**, except with respect to ~~IC 30-4-5~~; **the**
14 **application of IC 30-4-5-18 through IC 30-4-5-23 as it relates**
15 **those sections relate** to the maintenance of federal income tax
16 exemption privileges **to which an institution is entitled**;
17 (6) ~~nonprofit charitable foundations~~; corporations and other

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1 ~~associations~~ **entities governed by IC 23-17**, except with respect
 2 to ~~IC 30-4-5~~ **IC 30-4-5-18 through IC 30-4-5-23** as it ~~relates~~
 3 **those sections relate** to the maintenance of federal income tax
 4 exemption privileges **to which a corporation or other entity is**
 5 **entitled;**

6 (7) prepaid funeral plans;

7 (8) trusts for the care and upkeep of cemeteries;

8 (9) agreements to furnish funeral services; and

9 (10) trusts created or authorized by statute other than this article.

10 (d) IC 30-4-3-2(a) applies to an employee benefit trust that meets
 11 the requirements set forth in IC 30-4-3-2(c). However, no other
 12 provision of this article applies to an employee benefit trust.

13 **SECTION 2. IC 30-4-1-2 IS AMENDED TO READ AS FOLLOWS**
 14 **[EFFECTIVE JULY 1, 1999]: Sec. 2. As used in this article:**

15 (1) "Adult" means any person eighteen (18) years of age or older.

16 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 17 descendant, brother, sister, spouse of a brother or sister,
 18 employee, director, officer, partner, joint venturer, a corporation
 19 subject to common control with the trustee, a shareholder, or
 20 corporation who controls the trustee or a corporation controlled
 21 by the trustee other than as a fiduciary.

22 (3) "Beneficiary" means any cestui que trust or person named or
 23 a member of the class designated in the terms of the trust to be
 24 any person or class of persons for whose benefit the title to the
 25 trust property is held and for whom the trust is to be administered.

26 (4) "Breach of trust" means a violation by the trustee of any duty
 27 which is owed to the settlor or beneficiary.

28 **(5) "Charitable trust" means a trust in which all of the**
 29 **beneficiaries are the general public or organizations,**
 30 **including trusts, corporations, and associations, and that is**
 31 **organized and operated wholly for religious, charitable,**
 32 **scientific, public safety testing, literary, or educational**
 33 **purposes. The term does not include charitable remainder**
 34 **trusts, charitable lead trusts, pooled income funds, or any**
 35 **other form of split-interest charitable trust that has at least**
 36 **one noncharitable beneficiary.**

37 ~~(5)~~ **(6)** "Court" means a court having jurisdiction over trust
 38 matters.

39 ~~(6)~~ **(7)** "Income beneficiary" means a beneficiary to whom income
 40 is presently payable or for whom it is accumulated for distribution
 41 as income.

42 ~~(7)~~ **(8)** "Inventory value" means the cost of property to the settlor



or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

~~(8)~~ (9) "Minor" means any person under the age of eighteen (18) years.

~~(9)~~ (10) "Person" means a natural person, corporation, or a unit, agency, or other subdivision of national, state, or local government.

~~(10)~~ (11) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

~~(11)~~ (12) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

~~(12)~~ (13) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

~~(13)~~ (14) "Trust estate" means the trust property and the income derived from its use.

(15) "Trust for a benevolent public purpose" means a charitable trust as defined in this section, a split-interest trust as defined in Section 4947 of the Internal Revenue Code, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

~~(14)~~ (16) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

~~(15)~~ (17) "Trustee" means the person who is charged with the responsibility of administering the trust and includes a successor or added trustee.

SECTION 3. IC 30-4-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 27. (Cy Pres Doctrine)

If property is given in to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the settlor manifested a more general



intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

SECTION 4. IC 30-4-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify ~~charitable~~ trusts **for a benevolent public purpose**, and transfers not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary ~~charitable~~ trust **for a benevolent public purpose**, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and
- (2) the settlor of the trust or transfer if the settlor is living at the date of modification.

SECTION 5. IC 30-4-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) If property or money is devised or bequeathed or donated for a ~~benevolent public purpose~~, the trustee shall file a verified written statement annually with the court of the county in which the venue lies under ~~30-4-6-3~~ showing at least the items listed in ~~30-4-5-13(a)~~. **The trustee of a charitable trust shall file a verified written certification**



1 annually with the attorney general stating that a written statement
 2 of accounts has been prepared showing at least the items listed in
 3 section 13(a) of this chapter. The certification must state that the
 4 statement of accounts is available to the attorney general and any
 5 member of the general public upon request. A charitable trust may
 6 not be exempted from this requirement by a provision in a will,
 7 trust agreement, indenture, or other governing instrument. This
 8 subsection does not prevent a trustee from docketing a charitable
 9 trust for purposes of finalizing a written statement of account or
 10 any other lawful purpose in the manner provided in this article.
 11 However, this subsection does not apply to an organization that is
 12 not required to file a federal information return under Section
 13 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal
 14 Revenue Code.

15 (c) Upon petition by the settlor, a beneficiary or his personal
 16 representative, a person designated by the settlor to have advisory or
 17 supervisory powers over the trust, or any other person having an
 18 interest in the administration or the benefits of the trust, including the
 19 attorney general in the case of a trust for a benevolent public purpose,
 20 the court may direct the trustee to file a verified written statement of
 21 accounts showing the items listed in 30-4-5-13(a). The petition may be
 22 filed at any time, provided, however, that the court will not, in the
 23 absence of good cause shown, require the trustee to file a statement
 24 more than once a year.

25 (d) If the court's jurisdiction is of a continuing nature as provided in
 26 30-4-6-2, the trustee shall file a verified written statement of accounts
 27 containing the items shown in 30-4-5-13(a) with the court biennially,
 28 and the court may, on its own motion, require the trustee to file such a
 29 statement at any other time provided there is good cause for requiring
 30 a statement to be filed.

31 SECTION 6. IC 30-4-5-21 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 21. Subject to the
 33 provisions of this section and of section 23 of this chapter, every trust
 34 subject to the laws of this state which is a private foundation as defined
 35 in Section 509(a) of the Internal Revenue Code; a charitable trust
 36 treated as a private foundation under Section 4947(a)(1) of the Internal
 37 Revenue Code; or a split-interest trust as defined in Section 4947(a)(2)
 38 of the Internal Revenue Code for a benevolent public purpose that
 39 is subject to the provisions of Subchapter A of Chapter 42 of
 40 Subtitle D of the Internal Revenue Code shall:

41 (a) distribute each taxable year amounts sufficient for such trust
 42 to avoid liability for the tax imposed by Section 4942 of the



1 Internal Revenue Code, except that this subdivision shall not
2 apply to split-interest trusts;

3 (b) not engage in any act of self-dealing (as defined in Section
4 4941(d) of the Internal Revenue Code) which would subject such
5 trust to liability for the taxes imposed by Section 4941 of the
6 Internal Revenue Code;

7 (c) not retain any excess business holding (as defined in Section
8 4943(c) of the Internal Revenue Code) which would subject such
9 trust to liability for the taxes imposed by Section 4943 of the
10 Internal Revenue Code;

11 (d) not make any investment which would jeopardize the carrying
12 out of any of such trust's exempt purposes (within the meaning of
13 Section 4944 of the Internal Revenue Code) and which would
14 subject such trust to liability for the taxes imposed by Section
15 4944 of the Internal Revenue Code; and

16 (e) not make any taxable expenditure (as defined in Section
17 4945(d) of the Internal Revenue Code) which would subject such
18 trust to liability for the taxes imposed by Section 4945 of the
19 Internal Revenue Code.

20 The provisions of this section shall not apply to split-interest trusts or
21 amounts thereof to the extent that such split-interest trusts and amounts
22 are not, under Section 4947 of the Internal Revenue Code, subject to
23 the prohibitions applicable to private foundations.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 11, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 11 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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